

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NJD:NEW:TL-N-4297-00
Ammirato

date: SEP 07 2000

to: Nicholas Filannino, Team Manager, Group 1142

from: District Counsel, New Jersey District, Newark

subject: [REDACTED] - Form 872
U.I.L. 6501.00

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum supplements the advice issued on August 18, 2000. The analysis and conclusions reached in that memorandum remain unchanged. However, we do recommend that the language on Form 872 be modified as noted below. In addition, please ensure the notification requirements of Section 6501(c)(4)(B) are complied with. Please use the most recent version of the extension Form Letter 907(DO) (REV. 2-2000) or Letter 907(SC) (Rev. 12-1999) or Letter 967 (Rev. 12-1999).

Form 872 should read as:

[REDACTED] (EIN [REDACTED]), formerly [REDACTED], common

parent of the [REDACTED] (EIN [REDACTED]) and Subsidiaries consolidated group.*


Place on the bottom of Form 872:

*This is with respect to the consolidated income tax liability of [REDACTED] (EIN [REDACTED]) and Subsidiaries for the taxable years _____.

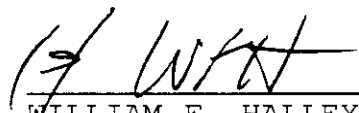
If you have any questions contact attorney Anthony Ammirato at 973-645-2539.

MATTHEW MAGNONE
District Counsel

Noted:


MATTHEW MAGNONE
District Counsel

By:


WILLIAM F. HALLEY
Assistant District Counsel

cc: Frank Attianesi

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NJD:NEW:TL-N-4297-00
AAmmirato

date: **AUG 18 2000**

to: Chief, Examination Division, New Jersey District

from: District Counsel, New Jersey District, Newark

subject: [REDACTED] - Form 872

U.I.L. 6501.00

This advisory is in response to your request for advice concerning the preparation of statute extensions. The advice is based on the facts as presented below. If the factual statement is incorrect please contact our office so that we may determine the effect, if any, on the advice rendered.

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ISSUE

How should a Form 872 for [REDACTED] and [REDACTED] be phrased?

FACTS

[REDACTED] (EIN [REDACTED]) is the common parent of a

consolidated group of corporations. [REDACTED] (EIN [REDACTED]), [REDACTED] % owned by [REDACTED], is a possession corporation operating in [REDACTED] which files a separate tax return for U.S. tax purposes. [REDACTED] changed its name to [REDACTED] and [REDACTED] changed its name to [REDACTED] effective as of [REDACTED]. Various affiliated members included in the [REDACTED] consolidated group also changed their names.

ANALYSIS

Section 6501(c)(4) provides that the Service and a taxpayer can enter into an agreement to extend the statute of limitations on the assessment of tax. Treas. Reg. 1.1502-77 provides the authority for a parent corporation to act as an agent for a subsidiary which is a member of the affiliated group.

Based on the above facts concerning the name changes, we recommend that the Forms be phrased as follows:


[REDACTED] and Subsidiaries (EIN [REDACTED]), formerly [REDACTED] and Subsidiaries.

[REDACTED] (EIN [REDACTED]), formerly [REDACTED]

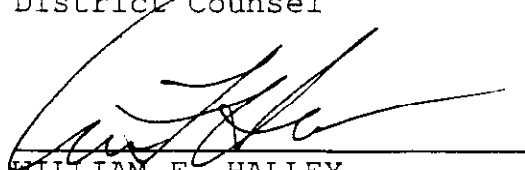
This advice is subject to National Office post review. If you have any questions contact attorney Anthony Ammirato at 973-645-2539.

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WILLIAM F. HALLEY
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cc: Frank Attianesi
cc: ARC-TL (NER)

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Internal Revenue Service

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CC:NER:NJD:NEW:TL-N-4297-00

Ammirato

AUG 18 2000

date:

to: Chief, Examination Division, New Jersey District

from: District Counsel, New Jersey District, Newark

subject: [REDACTED] - Form 872, [REDACTED]

U.I.L. 6501.00

This advisory is in response to your request for advice concerning the preparation of a Form 872. The advice is based on the facts as presented below. If the factual statement is incorrect please contact our office so that we may determine the effect, if any, on the advice rendered.

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FACTS:

On [REDACTED] [REDACTED] acquired [REDACTED] % of the outstanding stock of [REDACTED] & Subsidiaries EIN [REDACTED] ("[REDACTED]"). [REDACTED] became a member of the [REDACTED] affiliated group for U.S. income tax purposes. Prior to the acquisition, [REDACTED] and its affiliated corporations filed a consolidated return and [REDACTED] was the parent. [REDACTED]

filed a short return for the tax period January 1, [REDACTED] through [REDACTED]. Examination is securing a Form 872 for the short tax period ending [REDACTED] and the taxable year ending December 31, [REDACTED] for the [REDACTED] consolidated return.

Subsequent to the acquisition by [REDACTED], there was a number of restructuring mergers and name changes in the [REDACTED] group.

1. On [REDACTED], [REDACTED], a [REDACTED] owned subsidiary of [REDACTED] merged into its [REDACTED] owned subsidiary, [REDACTED] EIN [REDACTED]. [REDACTED] and [REDACTED] were both members of the [REDACTED] consolidated group prior to the merger. After the merger [REDACTED] was the surviving company and remained a member of the consolidated group.

2. On [REDACTED], [REDACTED] ("[REDACTED]") merged with [REDACTED], [REDACTED] was the surviving company. [REDACTED] and [REDACTED] were both [REDACTED] owned subsidiaries of [REDACTED] and members of the consolidated group.

3. On [REDACTED], [REDACTED] merged into [REDACTED] (tax-free asset merger subject to 381(a)). [REDACTED] was the surviving corporation.

4. During [REDACTED], [REDACTED] changed its name to [REDACTED] and [REDACTED] changed its name to [REDACTED]

5. On [REDACTED], [REDACTED] (EIN [REDACTED]) changed its name to [REDACTED]

6. On [REDACTED], [REDACTED] (EIN [REDACTED]) changed its name to [REDACTED]

ISSUES

How should a Form 872 extending the statute of limitations on the assessment of tax for the [REDACTED] consolidated group (pre-acquisition years) be phrased.

Who has the authority to sign the Form 872.

LEGAL AUTHORITY

Section 6501(c)(4) provides that the Service and a taxpayer can enter into an agreement to extend the statute of limitations on the assessment of tax. Treas. Reg. 1.1502-77 provides the

authority for a parent corporation to act as an agent for a subsidiary which is a member of the affiliated group. Treas. Reg. 1.1502-77(c) specifically provides,

(c) Effect of waiver given by common parent. Unless the district director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made or levy or proceeding in court begun in respect of the tax for a consolidated return year shall be applicable-

(1) To each corporation which was a member of the group during any part of such taxable year, and

(2) To each corporation the income of which was included in the consolidated return for such taxable year, notwithstanding that the tax liability of any such corporation is subsequently computed on the basis of a separate return under the provisions of §1.1502-75.

Temporary regulation 1.1502-77T(a)(3) provides, "[a] waiver of the statute of limitations with respect to the group given by any one or more corporations referred to in paragraph (a)(4) of this section is deemed to be given by the agent of the group." Included in 1.1502-77T(a)(4) is "a successor to the former common parent in a transaction to which section 381(a) applies".

ANALYSIS

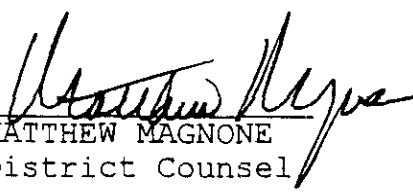
Based on the above facts concerning the name changes and mergers, we recommend that the Form 872 read as follows:

[REDACTED] (EIN [REDACTED], formerly [REDACTED]
[REDACTED] (EIN [REDACTED], formerly [REDACTED]
[REDACTED] (EIN [REDACTED], formerly [REDACTED]
[REDACTED] (EIN [REDACTED], successor in interest by merger to
[REDACTED] (EIN [REDACTED]) as agent for [REDACTED]
and Subsidiaries.

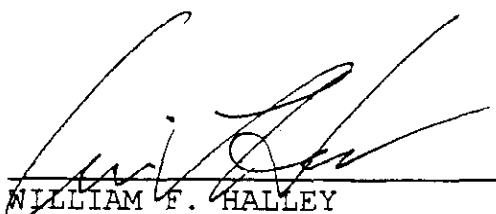
Please note, an authorized representative of [REDACTED] (not [REDACTED]) must sign the Form 872 for the pre-acquisition years. Although [REDACTED] is now a member of the [REDACTED] consolidated group, [REDACTED] does not have the authority to extend the statute for the pre-acquisition years.

This advice is subject to National Office post review. If you have any questions contact attorney Anthony Ammirato at 973-645-2539.

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